



1857

(63)

COO ve THE MUNICIPAL The County

Court House—Control and repair of—

7 Wm. IV., ch. 18, 11 Vic., ch. 18, secs. 36, 41.

The Magistrates in Quarter Sessions have no power to order furniture for the Court-house, and the County Council are not liable for furniture supplied.

The fact that the Court-house was also used as a Shire-hall for sittings of the Council, and the furniture made use of by them, could make no difference.

SPECIAL CASE.

UPON the order of the Magistrates of the County of Middlesex in Quarter Sessions, the Sheriff of the County ordered of the Plaintiff, who is a cabinet-maker and upholsterer, and the Plaintiff furnished and put up, the following articles, the 9th of February, 1857:—

In the Court Room.

RODMBS

versus

MUNICIPAL COUNCIL OF County of Middlesex

and repair of—

8, secs. 36, 41.

no power to order furniture
are not liable for furniture so
used as a Shire-hall for the
use of by them, could make

CASE.

ates of the County
ions, the Sheriff of
Plaintiff, who is a
r, and the Plaintiff
owing articles, on

from the date of the draft. The payment of costs to be at the discretion of the Court.

BECHER, Q.C., *for the Plaintiff.*

CONNOR, Q.C., *for Defendants.*

ROBINSON, C. J., delivered the judgment of the Court :—

“ We are of opinion that the Plaintiff has no claim upon the municipality to pay him for expenses incurred upon the express order of the justices of the peace.

“ He has obtained the order of the Court of Quarter Sessions in his favor, signed by the chairman, and professing to be made by virtue of the statute 7 Wm. IV., ch. 18, and 9 Vic., ch. 58.

“ The latter statute clearly has no reference to charges of this description, but only to fees for services rendered in criminal proceedings. Under the former act the order would be void, unless it quotes the act of parliament under which it was made. The question, therefore, is, whether the statute does in itself authorise this order, for it is the only other act named. It is certain that that act makes no provision relating to this kind of expenditure, or to any particular kind, but only to the payment of such as are authorised by other acts.

“ The statute 4 & 5 Vic. ch. 10, sec. 39, makes it the duty of the municipality to keep the public buildings in repair, and to provide means, and defray such expenses connected with the administration of justice as used to be provided for by the justices of the peace out of the district

In the Court Room.

Five sets damask curtains . . .	£71	0	0
Five sets blinds and rollers . . .	5	0	0

Judge's Room.

One carpet	5	0	0
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Sheriff's Office.

One carpet (40s.), chair cushion (15s.) . . .	2	15	0
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Clerk of the Peace Office.

Three office chairs and cushions . . .	5	5	0
Repairing chairs	*1	0	0
Two carpets	3	0	0
Refixing iron work to office chair, and listing door	*0	6	3

Total £93 6 3

11. 11. 1860. To Combs - \$ 265.17 373.25

At the adjourned Sessions, on the 18th of April, 1857, this account was duly audited (first having been sworn to), and a draft was signed by the chairman in favor of the plaintiff upon the treasurer of the county for the amount.

The matter being brought to the attention of the defendants, and they considering that the magistrates had exceeded their authority, the treasurer was directed by them not to pay the draft—except as regards two items amounting to one pound six shillings and three pence, marked thus,* which were for things ordered by the County Council Clerk, which the plaintiff refused to receive, unless the whole bill was paid—which direction he obeyed.

The account was audited and a draft issued under the statute 7 Wm IV., ch. 18, in accordance with all the provisions of that statute, under the presumption that that statute gave them authority to order these things. The prices are not disputed, but the liability of the defendants or the treasurer to pay the amount, or any part of it, except as above, is disputed.

The curtains and blinds in the court-room still remain there, and the meetings of the defendants, as also of the different courts of justice, have been held in that room since they were put up by the plaintiff, as usual. The carpet also remains in the Judges' room, and the articles furnished for the office of the Sheriff and Clerk of the Peace are still used by those officers.

If the County Council or Treasurer are liable to pay the amount, or any part of it, except as to the sum of one pound six shillings and three pence above-named, in the opinion of the Court they will do so, with interest

used to be provided for by the justices of the peace, out of the district funds.

"Of course when the justices of the peace lost the power of raising funds to meet these charges, the duty could no longer be incumbent upon them to attend to those objects. And the Statute 11 Vic. ch. 18, secs. 36 and 41, gave to the County Council the discretion of doing what was necessary for repairing and keeping in order the court-house, shire-hall, and other public buildings.

"The justices cannot, since that, bring any charge upon the county by anything which they may take upon them to do in these matters, which are thus placed especially under the care and control of the Council.

"The claim indeed seems rather to be attempted to be supported on the ground, that the curtains and window-blinds, which came to more than three-fourths of the amount of the order, were put up in the court-room, which is also used by the Council as the shire-hall. But we do not see that that fact at all helps the plaintiff's case. The court-house is not exclusively the shire-hall, and there is no pretence for saying that these things or any of the other items in question, were furnished with a view to the accommodation of the County Council. If that had been the object, it would surely have been left to the Council themselves to give the order, and to direct and approve of what was done.

"They could not be expected to abandon the court-house because it was made more comfortable and respectable than it had been before, and therefore their continuing to use it after the change as before, raises no implied assumpsit on their part to pay for what was not ordered by them, nor by their agent, but by the justices with a view to the accommodation of the court, and not from an idea on the part that it rested with them to provide furniture for the use of the Council.

"Besides, we could not rely on the supposed acceptance and use of the articles by the Council as furnishing proof by implication that the things were provided at their request, for it is expressly admitted that it was the Sheriff of the county who gave the order to the plaintiff, and he certainly was not the agent of the Council.

"It is a pity that there should be any reluctance on the part of the Council to do anything reasonable and proper for the furnishing of the court-room, which is in itself a very satisfactory one, and highly creditable to the county, but we know no ground upon which we could hold the Council to be liable to pay any of the charges referred to us."

Judgment for Defendants.